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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,612	02/26/2002	Marco Guida	4389-5-C1	8119

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5 SCIENCE PARK  
NEW HAVEN, CT 06511

EXAMINER

JOHANNSSEN, DIANA B

ART UNIT PAPER NUMBER

1634

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/085,612

Applicant(s)

GUIDA ET AL.

Examiner

Diana B. Johannsen

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 17,18,22,25,26 and 35-44.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
Diana B. Johannsen  
Primary Examiner  
December 29, 2004

Continuation of 2. NOTE: Applicant's proposed amendments raise new issues under 35 USC 112, second paragraph that would require further consideration. First, Applicant has proposed amending the claims to require determining the presence or absence of "a G at nucleotide 1037 in SEQ ID NO:4." It is unclear what would be encompassed by this language. Particularly, it is not clear whether the claims require the detection of SEQ ID NO: 4 in its entirety in order for this limitation to be met, whether the claims might encompass, e.g., the detection of some subset of SEQ ID NO: 4 that would be considered sufficient to allow for the identification of nucleotide as being the required nucleotide 1037, etc. Thus, this language does not apprise one of skill in the art as to what would actually have to be determined/detected to meet the claims. With further regard to claim 18, it is noted that antecedent basis for the proposed recitation "the G nucleotide 1037 in SEQ ID NO:4" is lacking. .

Continuation of 5. does NOT place the application in condition for allowance ~~because~~: for the reasons of record in view of the non-entry of the after final amendment.

Continuation of 10. Other: A typographical error in claim 18 (the recitation "whereinsaid" rather than "wherein said") is also noted.